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10/776,811	02/11/2004	Gaelle Chevalier	TS-6691 (US) JDA:KNL	3373
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SHELL OIL COMPANY P O BOX 2463 HOUSTON, TX 772522463			EXAMINER COONEY, JOHN M	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/776,811  
Filing Date: February 11, 2004  
Appellant(s): CHEVALIER ET AL.

**MAILED**  
**AUG 24 2007**  
**GROUP 1700**

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Paula D. Morris  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 6-18-07 appealing from the Office action mailed 5-31-06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

**WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Rejection of claim 1-14 under 35 USC 102 over Watson, Jr. et al.(4,816,494) is withdrawn.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4,816,494                      WATSON, JR. ET AL.                      3-1989

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson, Jr. et al. (4,816,494).

Watson, Jr. et al. disclose preparations of polyurethane foams from combinations of polymer-modified polyols including those claimed by applicants, blowing agents and catalysts as claimed by applicants, and other additives and reactants which are combined with isocyanates at indices as defined by applicants' claims (see column 3 line

Art Unit: 1711

30 – column 5 line 21, column 5 lines 53 - column 7 line 23, and the examples, as well as, the entire document).

Watson, Jr. et al. differs from applicants' claims in that it does not particularly require combinations of polymer modified polyols as claimed. However, the reference does disclose employment of each of the claim selected polymer-polyols as being acceptable for the purpose of achieving the enhanced cushioning properties desired. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed combinations of the recited polymer polyols of Watson, Jr. et al. in the preparations of Watson, Jr. et al. for the purpose of providing enhanced cushioning effects in products derived therefrom in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

#### **(10) Response to Argument**

Appellants' arguments have been considered. However, rejection is maintained.

Regarding claims requiring blends of two components taught to be useful for the same purpose, it has long been held that it is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980) and MPEP 2144.06. One of ordinary skill in the art would have found it obvious to use both

Art Unit: 1711

olamine based polymer polyol and ethylenically unsaturated monomer based polymer polyols, each of which is taught in the applied prior art to impart the same or similar effects in terms of comfort enhancement in urethane foam compositions formed therefrom in order to form a third composition to be used for the very same or similar purpose. {See again In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).}

Rejection is maintained for the reasons set forth above. Motivation to make the combinations as set forth in the claims is maintained to be properly established as set forth above, and applicants' indications of limits to what the examples present are insufficient in rebutting the position held above. Employment of two components taught individually to be useful for the same purpose would have been obviously combined to make a third composition useful for the same purpose with the expectation that they would behave at least suitably for the same purpose.

Finally, it is held and maintained that appellants' have not made sufficient showings of results that are not commensurate in scope with the scope of the claims, and it is not seen that applicants have demonstrated clear and convincing evidence of unexpected results that are more significant than that which would have been expected.

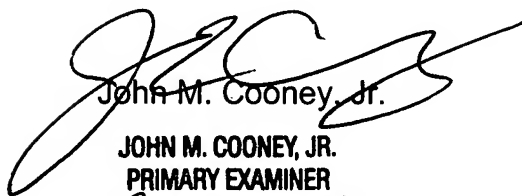
#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 1711

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
JOHN M. COONEY, JR.  
PRIMARY EXAMINER  
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Conferees:

  
James Seidleck

  
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